CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 57

JOSEPH E. SNOWDEN, PETITIONER,

vs.

EDWARD J. HUGHES, LOUIE E. LEWIS AND ROBERT E. STRAUS, ET AL., ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 3, 1943.

CERTIORARI GRANTED JUNE 7, 1943.

IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1942.

No.

JOSEPH E. SNOWDEN,

Petitioner,

vs.

EDWARD J. HUGHES, LOUIE E. LEWIS AND ROBERT E. STRAUS, ELI M. STRAUS AND JAMES LEVY, AS CO-EXECUTORS OF THE LAST WILL AND TESTAMENT OF HENRY HORNER, DECEASED,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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TRANSCRIPT OF RECORD

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 7975

JOSEPH A. SNOWDEN,

Plaintiff-Appellant,

vs.

EDWARD J. HUGHES, LOUIE E. LEWIS, AND EDWARD K. STRAUS, ELY M. STRAUS, AND [illegible], as Co-Executors of the Last Will and Testament of Henry Hughes, Deceased,

Defendant-Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

TRANSCRIPT OF RECORD FILED APRIL 17, 1926

PRINTED RECORD

IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

No. 7986

JOSEPH E. SNOWDEN,

Plaintiff-Appellant,

vs.

EDWARD J. HUGHES, LOUIE E. LEWIS, AND ROBERT E. STRAUS, ELI M. STRAUS, AND JAMES LEVY, AS CO-EXECUTORS OF THE LAST WILL AND TESTAMENT OF HENRY HORNER, DECEASED,

Defendant-Appellee.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

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1 Pleas in the District Court of the United States for the Northern District of Illinois, Eastern Division, begun and held at the United States Court Room, in the City of Chicago, in said District and Division, before the Honorable Charles E. Woodward, District Judge of the United States for the Northern District of Illinois on Twenty-first day of November, and Eleventh day of December, in the year of our Lord one thousand nine hundred and Forty-one, being one of the days of the regular November Term of said Court, begun Monday, the Second day of November, and of our Independence the 166th year. Placita

Present:
Honorable Charles E. Woodward, District Judge,
William H. McDonnell, U. S. Marshal,
Hoyt King, Clerk.

Filed June 13, 1941

2 IN THE DISTRICT COURT OF THE UNITED STATES
Northern District of Illinois
Eastern Division

Joseph E. Snowden, *Plaintiff,*
vs.
Edward J. Hughes, Louie E. Lewis and Robert E. Straus, Eli M. Straus and James Levy, as Co-executors of the Last Will and Testament of Henry Horner, Deceased, *Defendants.* } No. 3090

Be It Remembered, that the above-entitled action was commenced by the filing of the following Complaint in the above-entitled cause, in the office of the Clerk of the District Court of the United States for the Northern District of Illinois, Eastern Division, on this the Thirteenth day of June, A. D. 1941.

3 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Civil Action No. 3090)

COMPLAINT.

To the Honorable Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

Now comes the plaintiff, Joseph E. Snowden, complaining of Edward J. Hughes and Louie E. Lewis, formerly members of the State Primary Canvassing Board of Illinois during the year 1940, Robert E. Straus, Eli M. Straus and James Levy, co-executors of the last will and testament of Henry Horner, deceased, who during his lifetime was a member of the State Primary Canvassing Board of Illinois during the year 1940, and respectfully shows unto this Honorable Court as follows:

1. The jurisdiction of this Court is invoked under Subdivision 1 of Section 41 of Title 28 of the United States Code; this being an action at law which arises under the Constitution and laws of the United States, viz., the Fourteenth Amendment of said Constitution, and sections 41, 43 and subdivision 3 of section 47 of Title 8 of the United States Code, wherein the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.00. The jurisdiction of this Court is also invoked under subdivision 12 of section 41 of Title 28 of the United States Code, this being an action brought for the recovery of damages
4. on account of injury to property and the deprivation of a right or privilege of a citizen of the United States and for the recovery of damages done in furtherance of a conspiracy in violation of section 47 of Title 8 of the United States Code. The jurisdiction of this Court is further invoked under subdivision 14 of Section 41 of Title 28 of the United States Code, this being an action at law brought to redress the deprivation under color of law, statute, ordinance, regulation, custom or usage of a State of rights, privileges, and immunities secured by the Constitution of the United States, viz., the Fourteenth Amendment to said Constitution, and of rights secured by laws of the United States, viz., Section 43, Title 8 of the United States Code, this being an action for damages against persons who, under color of a statute, ordinance, regulation, custom, and usage of a State subjected and caused to be subjected a citizen of the United States to the deprivation of rights, privileges and immunities secured by the Constitution of the United States, viz., the Fourteenth Amendment to said Constitution, all of which will more fully appear hereafter.

2. That all parties to this action, both plaintiff and defendants, are citizens of the United States and of the State of Illinois, and resident and domiciled in said State. That Henry Horner, during his lifetime was a citizen of the United States and of the State of Illinois and was a resident and domiciled in said State at the time of his death.

3. That the plaintiff, Joseph E. Snowden, is a native born citizen of Chicago, Cook County, State of Illinois, is more than twenty-one years of age, and has resided in the Third Senatorial District of Illinois for a period of more than twenty years next preceding the filing of this com-

plaint. Plaintiff at all times mentioned herein was and is a duly and legally qualified elector under the Constitution of the United States and of the State of Illinois, and is subject to none of the disqualifications provided for voting or for holding the office of representative in the General Assembly of Illinois under the Constitution and laws of the State of Illinois and of the United States. Plaintiff has been for more than thirty years, and is now, a member of the Republican Party and a believer in its tenets and was at all times hereinafter mentioned legally qualified to be a candidate in the Republican Primaries and to be a nominee of the Republican Party.

4. That all of the times mentioned herein, decedent Henry Horner was the duly elected Governor of the State of Illinois, defendant Edward J. Hughes was the duly elected Secretary of State of said State, defendant Louie E. Lewis was the duly elected Treasurer of said State. By virtue of the authority of sections 420 and 456, chapter 46, Illinois Revised Statutes the said decedent Henry Horner, and said defendants, Edward J. Hughes, and Louie E. Lewis were the State Primary Canvassing Board of said State, ministerial officers, charged with the duty of canvassing the returns of primaries conducted in said State, and issuing a proclamation of result thereof made.

Robert E. Straus, Eli M. Straus and James Levy are the co-executors of the last will and testament of Henry Horner, now deceased, and have qualified and are acting pursuant to said last will and testament.

5. That on the 9th day of April, 1940, a general and State wide primary election was held in the State of Illinois. In the said Third Senatorial District there was a primary election for nomination of candidates upon the Republican ticket for the office of members of General Assembly--more particularly Representatives in said General Assembly—pursuant to section 444, et seq., chapter 46, Illinois Revised Statutes. Prior to the said date plaintiff's name had been duly and properly certified as a candidate for the said office in accordance with sections 449, 450, 451, 452 and 453, chapter 46, Illinois Revised Statutes. That at the said Primary Election two, and only two, candidates for representatives in the General Assembly were to be nominated on the Republican ticket. The number of candidates to be nominated is governed by section 454, chapter 46, Illinois Revised

Statutes. The said Republican Senatorial Committee of the said Third Senatorial District had, prior to the said date and pursuant to said statute, filed with the Board of Election Commissioners, the County Clerk of Cook County, and the Secretary of State of Illinois, its proper resolution which is attached hereto, marked "Exhibit A", and made a part hereof.

6. That the votes cast by the Republican electors in said Senatorial District for the nomination of candidates for Representatives in the General Assembly were duly canvassed in accordance with the provisions of section 456, chapter 46, Illinois Revised Statutes. Thereafter, pursuant to the mandate contained in section 456, Chapter 46, Illinois Revised Statutes, the tabulated statement of canvass of returns showing the votes given to the candidates of the Republican Party in the various election precincts and district of the Third Senatorial District of the State of Illinois, at the said Primary Election were duly authenticated and certified to by the Canvassing Board of Cook County, Illinois and were, on the 23rd day of April, A. D. 1940, forwarded to the Secretary of State. Said tabulated canvass of returns showed that one Charles J. Jenkins and this plaintiff were the two candidates receiving the highest number of votes for nomination for representative in the General Assembly on the Republican ticket. Said tabulated statements of canvass of returns are attached hereto marked "Exhibit B", and made a part hereof.

7. That it is provided by the Constitution of Illinois Article IV, sections 7 and 8 that "Three representatives shall be elected in each senatorial district at the general election in the year of Our Lord 1872, and every two years thereafter." In the Third Senatorial District the Democratic Senatorial Committee for the said District had
7 provided, by proper resolution, in accordance with section 454, chapter 46, Illinois Revised Statutes, that there should be only one candidate nominated at the said Primary Election to be held April 9, 1940 as a candidate for Representative in the General Assembly upon the Democratic ticket. Said resolution was duly passed by said Senatorial Committee and copies of the same were filed with the Board of Election Commissioners, the County Clerk of Cook County, Illinois and the Secretary of State of Illinois. A copy of said resolution is attached hereto, marked "Exhibit C", and made a part hereof.

8. That because of the action duly taken by the Republican and Democratic Senatorial Committee of the Third Senatorial District referred to in paragraphs 5 and 7 hereof the nominations so made by the respective political parties were tantamount to the election of the persons so nominated as Representatives in the General Assembly in and for the Third Senatorial District of Illinois.

9. That after the defendant, Edward J. Hughes, acting as Secretary of State received the tabulated statement of returns from the Canvassing Board for Cook County, and the County Clerk of Cook County, the said defendant compiled, certified and issued for public distribution a certain pamphlet entitled as follows:

OFFICIAL VOTE
OF THE
STATE OF ILLINOIS
Cast At The
PRIMARY ELECTION
Held On
April 9, 1940
(State Seal)
Compiled By
EDWARD J. HUGHES,
Secretary of State
Printed by Authority of
the State of Illinois,

a copy of which is attached hereto marked "Exhibit D", and made a part hereof. On page 60 of the said "Exhibit D" the vote as proclaimed and canvassed for
8 the Third Senatorial District is set out, in part, as follows:

PRIMARY VOTE FOR REPRESENTATIVE
IN THE GENERAL ASSEMBLY
All Parties—April 9, 1940
3rd District—Cook County

Democratic—	
George Garry Noonan	30,009
Joseph F. Tittinger	3,764
George Williams	2,129
Frank J. Zengri	1,352
Francis P. Cahill	1,224½
James Phil Durden	627
Lobengula Mosley	616½

Republican—	
Charles J. Jenkins	12,781½
Joseph E. Snowden	3,375½
Frank S. Cacciatore	1,538½
Cora A. Graham	1,511
William McCuen	793
M. Earl Sardon	482

The same tabulated statement of vote is also published in the last official publication issued by the said defendant as Secretary of State showing the official vote cast at all of the State-wide elections held during the calendar year 1940.

10. Under and by virtue of the mandate set forth in section 456, chapter 46, Illinois Revised Statutes it became and was the duty of the defendants Hughes and Lewis and the testator of defendants, Robert E. Straus, Eli M. Straus and James Levy, to wit, Henry Horner, as the members of the State Primary Canvassing Board to receive the tabulated statements of returns of the votes cast in the primary for the nomination of candidates of the Republican Party for Representative in the General Assembly in the Third Senatorial District and to canvass the said returns so received and to proclaim the result thereof in accordance with the provisions of section 454, chapter 46, Illinois Revised Statutes, which provides that the candidates receiving the highest number of votes shall be declared nominated. That the said Henry Horner,
9 Edward J. Hughes and Louie E. Lewis in their official capacity as the State Primary Canvassing Board did claim to have canvassed the tabulated statements of returns from the Third Senatorial District. On the 29th day of April, A. D., 1940 they issued their Official Proclamation designating only one nominee for each party for the office of Representative in the General Assembly from the Third Senatorial District to wit, George Garry Noonan for the Democratic Party, and Charles J. Jenkins for the Republican Party. A copy of this proclamation is attached hereto marked "Exhibit E", and made a part hereof.

And the said Henry Horner, Edward J. Hughes and Louie E. Lewis in their official capacity as the State Primary Canvassing Board after the issuance of their official Proclamation on the 29th day of April, A. D., 1940, willfully, maliciously and arbitrarily failed and refused to file their proper and correct certificate in the office of the

Secretary of State showing that plaintiff had been and was one of the nominees of the Republican Party for the Office of Representative in the General Assembly from the Third Senatorial District of Illinois.

11. That notwithstanding the clear and plain mandates of section 454 and section 456, chapter 46, Illinois Revised Statutes, the defendants Edward J. Hughes and Louie E. Lewis, and the decedent Henry Horner, acting as the State Primary Canvassing Board of Illinois, entered into an understanding and agreement and combined, conspired and confederated together to willfully, maliciously and arbitrarily refuse to designate plaintiff as one of the nominees of the Republican Party for the office of Representative in the General Assembly from the Third Senatorial District of Illinois and to issue their Official Proclamation designating plaintiff as one of the said nominees and to file their proper and correct certificate in the office of the Secretary of State of Illinois showing that plaintiff was one of the nominees of the Republican Party for the office of Representative in the General Assembly from the Third Senatorial District of Illinois.

That the said action of the said defendants Edward J. Hughes and Louie E. Lewis, and the decedent Henry Horner was an unequal, unjust and oppressive administration of the laws of the State of Illinois, in their capacities as State Officers, and a denial to plaintiff, by the State of Illinois, of the protection of the provisions of the Fourteenth Amendment to the Constitution of the United States which provides "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

That the said actions of the said defendants Edward J. Hughes and Louis E. Lewis, and the decedent Henry Horner were in contravention of Section 43, Title 8, United States Code in that the said Edward J. Hughes, Louie E. Lewis and the decedent Henry Horner under color of the laws of Illinois subjected plaintiff to the deprivation of rights, privileges and immunities secured by the Constitution and Laws of the United States, namely the Fourteenth Amendment to the said Constitution of the United

States. And in contravention of sub-section 3 of Section 47, Title 8, United States Code in that the said Edward J. Hughes, Louie E. Lewis and the decedent Henry Horner did conspire for the purpose of depriving plaintiff of the equal protection of the laws and of the equal privileges and immunities under the laws; and the said Edward J. Hughes, Louie E. Lewis, and the decedent Henry Horner or one or more of them, notwithstanding the clear and plain mandates of section 454 and section 456, chapter 46, Illinois Revised Statutes, refused to designate
11 plaintiff as one of the nominees of the Republican Party for the office of Representative in the General Assembly in and for the Third Senatorial District of Illinois and to issue their Official Proclamation designating plaintiff as one of the said nominees and to file their proper and correct certificate in the office of the Secretary of State showing plaintiff was one of the nominees of the Republican Party for the office of Representative in the General Assembly from the Third Senatorial District. Whereby plaintiff was injured in his property and was deprived of having and exercising rights and privileges of a citizen of the United States.

12. That because of the action taken by the Republican and Democratic Senatorial Committees of the Third Senatorial District of Illinois referred to in paragraphs 5 and 7 hereof the nominations so made by the respective political parties were tantamount to the election of the persons so nominated as Representatives in the General Assembly in and for the Third Senatorial District of Illinois.

That by virtue of the acts of the said defendants Edward J. Hughes and Louie E. Lewis, and the decedent Henry Horner, referred to in paragraphs 10 and 11 hereof, purporting to act under the color of the laws of the State of Illinois, plaintiff was deprived on the nomination of the Republican Party for the office of Representative in the General Assembly from the Third Senatorial District of Illinois, which was tantamount to election to said office.

13. That at all times mentioned herein the defendants Edward J. Hughes, Louie E. Lewis and the decedent Henry Horner were acting as officers of the State of Illinos and purported to be acting under color of the laws of said State.

Wherefore the plaintiff shows to this Honorable Court that he has been damaged in the amount of $50,000.00

and prays that a judgment be entered against said defendants and each of them in such amount.

Joseph E. Snowden,
Plaintiff.

(Affidavit of plaintiff and exhibits referred to in complaint not copied.)

Filed July 7, 1941

12 And on, to wit, the 7th day of July, 1941, came the Defendant, Edward J. Hughes by his attorney and filed in the Clerk's office of said Court his certain Motion to Strike Complaint and Dismiss the Suit in words and figures following, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Civil Action No. 3090)

MOTION OF EDWARD J. HUGHES TO STRIKE THE PLAINTIFF'S COMPLAINT AND DISMISS THE SUIT.

The Defendant, Edward J. Hughes, moves the Court to strike the complaint of the plaintiff and dismiss the suit upon the following grounds:

1. The complaint fails to state a claim upon which relief can be granted. In support of said motion the Defendant states the following grounds:

(a) The complaint fails to state a cause of action either under the Constitution or laws of the United States of America or under the common law, statutes, or Constitution of the State of Illinois.

(b) The facts alleged in the complaint fail to show that the plaintiff was deprived of any rights, privileges or immunities accruing to him under the Constitution or laws of the United States of America.

(c) No sufficient facts are alleged in the complaint to state a cause of action under Sub-division 1 of Section 41 of Title 28 of the United States Code, under Sections 41, 43 and Sub-division 3 of Sec-

tion 47 of Title 8 of the United States Code, or any of them.

(d) Said complaint shows upon its face that the matters and things therein alleged are solely and exclusively matters of state law under the laws and Constitution of the State of Illinois.

14 (e) The right to nomination for office created solely by the laws of the State does not involve property within the meaning of the 14th Amendment of the United States Constitution, nor is it within the scope of the Constitution or laws of the United States of America.

(f) The facts alleged in said complaint fail to show any discrimination by the defendants against the plaintiff by reason of race, color or previous condition of servitude, or otherwise, embraced within either the 14th or 15th Amendments of the Constitution of the United States of America.

(g) The complaint fails to show that the plaintiff has availed himself of any of the remedies afforded to him by the Constitution and laws of the State of Illinois, or that no remedies are available to him under the statutes and laws of Illinois.

(h) The alleged cause of action is predicated solely upon the claim of the failure of State officers to perform duties imposed upon them in the administration of State law, and by reason thereof does not entitle the plaintiff to invoke the provisions of the Constitution or laws of the United States of America.

2. It affirmatively appears from the complaint that this Court has no jurisdiction of the subject matter for the reason that no diversity of citizenship is claimed and the complaint does not state a cause of action for the reasons above set forth under the laws or Constitution of the United States of America and, therefore, the cause of action is not one of which this Court, as a District Court of the United States, has original jurisdiction under the Constitution and Laws of the United States of America.

Wherefore, the Defendant prays that the complaint be stricken and the suit dismissed with costs against the plaintiff.

George F. Barrett,
Attorney General of the
State of Illinois,
Attorney for Edward J. Hughes.

Filed July 7, 1941

15 And on, to wit, the 7th day of July, 1941, came the Defendants, Robert E. Straus, et al. by their attorneys and filed in the Clerk's office of said Court their certain Motion to Strike Complaint and Dismiss the Suit in words and figures following, to wit:

16 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

* * (Caption—Civil Action No. 3090) * *

MOTION OF ROBERT E. STRAUS, ELI M. STRAUS AND JAMES LEVY, CO-EXECUTORS OF THE LAST WILL AND TESTAMENT OF HENRY HORNER, DECEASED, TO STRIKE THE PLAINTIFF'S COMPLAINT AND DISMISS THE SUIT.

The defendants, Robert E. Straus, Eli M. Straus and James Levy, as Co-Executors of the Last Will and Testament of Henry Horner, deceased, move the Court to strike the complaint of the plaintiff and dismiss the suit upon the following grounds:

1. The complaint fails to state a claim upon which relief can be granted. In support of said motion the defendants state the following grounds:

(a) The complaint fails to state a cause of action either under the Constitution or laws of the United States of America or under the common law statutes or Constitution of the State of Illinois.

(b) The facts alleged in the complaint fail to show that the plaintiff was deprived of any rights, privileges or immunities accruing to him under the Constitution or laws of the United States of America.

(c) No sufficient facts are alleged in the complaint to state a cause of action under Sub-division 1 of Section 41 of Title 28 of the United States Code, under Sections 41, 43 and Sub-division 3 of Section 47 of Title 8 of the United States Code, or any of them.

(d) Said complaint shows upon its face that the matters and things therein alleged are solely and exclusively matters of state law under the laws and Constitution of the State of Illinois.

(e) The right to nomination for office created solely by the laws of the State does not involve property within the meaning of the 14th Amendment of the United States Constitution, nor is it within the scope of the Constitution or laws of the United States of America.

(f) The facts alleged in said complaint fail to show any discrimination by the defendants against the plaintiff by reason of race, color or previous condition of servitude, or otherwise, embraced within either the 14th or 15th Amendments of the Constitution of the United States of America.

(g) The complaint fails to show that the plaintiff has availed himself of any of the remedies afforded to him by the Constitution and laws of the State of Illinois, or that no remedies are available to him under the statutes and laws of Illinois.

(h) The alleged cause of action is predicated solely upon the claim of the failure of State officers to perform duties imposed upon them in the administration of State law, and by reason thereof does not entitle the plaintiff to invoke the provisions of the Constitution or laws of the United States of America.

2. It affirmatively appears from the complaint that this Court has no jurisdiction of the subject matter for the reason that no diversity of citizenship is claimed and the complaint does not state a cause of action for the reasons above set forth under the laws or Constitution of the United States of America and, therefore, the cause of action is not one of which this Court, as a District Court of the United States, has original jurisdiction under the Constitution and Laws of the United States of America.

3. It affirmatively appears from said complaint that the cause of action, if any, which might have existed against Henry Horner during his lifetime, has abated by his death and does not survive against these defendants, either under the laws of the State of Illinois or of the United States of America.

Wherefore, these defendants pray that the complaint be stricken and the suit dismissed with costs against the plaintiff.

Sonnenschein, Berkson, Lautmann, Levinson & Morse,
Attorneys for said Defendants.

Herbert M. Lautmann,
One of the attorneys of record for said defendants.

(Affidavit of Service hereto attached—not copied.)

Entered Nov 21, 1941

23 And afterwards, to wit, on the 21st day of November, A. D. 1941, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

24 In the District Court of the United States
For the Northern District of Illinois
Eastern Division

Friday, November 21, A. D. 1941.

Present:

Honorable Charles E. Woodward, District Judge.

(Caption—No. 3090)

It Is Ordered by the Court that the motion of defendants, Robert E. Straus, Eli M. Straus and James Levy, Co-executors of the Last Will and Testament of Henry Horner, Deceased, and Edward J. Hughes to dismiss the above entitled cause be sustained.

Ordered that the above entitled cause as to the Defendants Robert E. Straus, Eli M. Straus and James Levy, Co-executors of the Last Will and Testament of Henry Horner, Deceased, and Edward J. Hughes be and the same is hereby dismissed at the costs of plaintiff.

19 And on, to wit, the 11th day of December, 1941, came the Defendant, Louie E. Lewis by his attorneys and filed in the Clerk's office of said Court his certain Motion to Strike Complaint and Dismiss the Suit in words and figures following, to wit: Filed Dec. 11, 1941

20 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
* * (Caption--Civil Action No. 3990) * *

MOTION OF LOUIE E. LEWIS TO STRIKE THE PLAINTIFF'S COMPLAINT AND DISMISS THE SUIT.

The Defendant, Louie E. Louis, moves the Court to strike the complaint of the plaintiff and dismiss the suit upon the following grounds:

1. The complaint fails to state a claim upon which relief can be granted. In support of said motion the Defendant states the following grounds:

(a) The complaint fails to state a cause of action either under the Constitution or laws of the United States of America or under the common law, statutes, or Constitution of the State of Illinois.

(b) The facts alleged in the complaint fail to show that the plaintiff was deprived of any rights, privileges or immunities accruing to him under the Constitution or laws of the United States of America.

(c) No sufficient facts are alleged in the complaint to state a cause of action under Sub-division 1 of Section 41 of Title 28 of the United States Code, under Sections 41, 43 and Sub-division 3 of Section 47 of Title 8 of the United States Code, or any of them.

(d) Said complaint shows upon its face that the matters and things therein alleged are solely and exclusively matters of state law under the laws and Constitution of the State of Illinois.

21 (e) The right to nomination for office created solely by the laws of the State does not involve property

within the meaning of the 14th Amendment of the United States Constitution, nor is it within the scope of the Constitution or laws of the United States of America.

(f) The facts alleged in said complaint fail to show any discrimination by the defendants against the plaintiff by reason of race, color or previous condition of servitude, or otherwise, embraced within either the 14th or 15th Amendments of the Constitution of the United States of America.

(g) The complaint fails to show that the plaintiff has availed himself of any of the remedies afforded to him by the Constitution and laws of the State of Illinois, or that no remedies are available to him under the statutes and laws of Illinois.

(h) The alleged cause of action is predicated solely upon the claim of the failure of State officers to perform duties imposed upon them in the administration of State law, and by reason thereof does not entitle the plaintiff to invoke the provisions of the Constitution or laws of the United States of America.

2. It affirmatively appears from the complaint that this Court has no jurisdiction of the subject matter for the reason that no diversity of citizenship is claimed and the complaint does not state a cause of action for the reasons above set forth under the laws or Constitution of the United States of America and, therefore, the cause of action is not one of which this Court, as a District Court of the United States, has original jurisdiction under the Constitution and Laws of the United States of America.

3. This defendant does hereby adopt as his own, in support of his Motion to Strike the Plaintiff's Complaint and dismiss the suit, the brief submitted by the defendant, Edward J. Hughes, in support of his Motion to Strike the Plaintiff's Complaint and dismiss the suit, and does also hereby adopt as his own the reply brief of the Defendant, Edward J. Hughes, to the brief submitted by the Plaintiff herein.

Wherefore, the Defendant prays that the complaint be stricken and the suit dismissed with costs against the Plaintiff.

George F. Barrett,
Attorney General of the State of Illinois,
Attorney for Louie E. Lewis.

25 And afterwards, to wit, on the 11th day of December, A.D. 1941, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit: Entered Dec. 11, 1941

26 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
* * (Caption—Civil Action No. 3090) * *

ORDER.

On motion of Louie E. Lewis, defendant herein, for leave to file his appearance instanter and for leave to file his motion to strike the plaintiff's complaint and dismiss the suit, instanter, and for leave to adopt as his own the brief submitted by the defendant, Edward J. Hughes, in support of his motion to strike the complaint and dismiss the suit and for leave to adopt as his own the reply brief of Edward J. Hughes to the brief filed by the plaintiff, Joseph E. Snowden, and for an order sustaining the motion of Louie E. Lewis to dismiss the above cause and for an order dismissing the above entitled cause as to the defendant, Louie E. Lewis, notice having been served upon all parties, and the court being fully advised in the premises,

It Is Hereby Ordered that leave be and is hereby given to Louie E. Lewis, defendant herein, to file his appearance instanter.

It Is Further Ordered that leave be and is hereby given to the defendant, Louie E. Lewis, to file instanter his
27 motion to strike the plaintiff's complaint and dismiss the suit.

It Is Further Ordered that leave be and is hereby given to Louie E. Lewis, defendant herein, to adopt as his own in support of his motion to strike the plaintiff's complaint and dismiss the suit, the brief submitted by the defendant, Edward J. Hughes, in support of his motion to strike the complaint and dismiss the suit and to adopt as his own the reply brief of the defendant, Edward J. Hughes, filed in reply to the brief filed by Joseph E. Snowden, plaintiff herein.

It Is Further Ordered that the motion of the defendant, Louie E. Lewis, to dismiss the above cause be and the same is hereby sustained.

It Is Further Ordered that the above entitled cause as to the defendant, Louie E. Lewis, be and the same is hereby dismissed at the cost of the plaintiff.

Enter:
Charles E. Woodward,
Judge.

Dated: Dec. 11, A. D. 1941.

Filed Feb. 16, 1942

28 And on, to wit, the 16th day of February, 1942, came the Plaintiff by his attorneys and filed in the Clerk's office of said Court his certain Notice of Appeal in words and figures following, to wit:

29 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division
(Caption—Civil Action No. 3090)

NOTICE OF APPEAL.

Notice is hereby given that Joseph E. Snowden, Plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Seventh Circuit from the final order and judgment entered in this action on the 21st day of November, 1941 dismissing the above entitled cause as to the Defendants Robert W. Straus, Eli M. Straus and James Levy, Co-executors of the Last Will and Testament of Henry Horner, deceased, and Edward J. Hughes; and also from the final order and judgment entered in this action on the 11th day of December, 1941 dismissing the above entitled cause as to the Defendant, Louie E. Lewis.

Joseph E. Snowden
Joseph E. Snowden
W. Robert Ming, Jr.
W. Robert Ming, Jr.
Harris B. Gaines
Harris B. Gaines
Attorneys for the Plaintiff, Joseph E. Snowden.

32 And on, to wit, the 9th day of April, 1942, came the Plaintiff-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points in words and figures following, to wit: Filed Apr. 9, 1942

33 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

(Caption—Civil Action No. 3090)

STATEMENT OF POINTS.

Now comes Joseph E. Snowden, Plaintiff-Appellant in the above entitled cause, and says that he relies upon the following points in the prosecution of his appeal from the final order and judgment entered by the District in the above entitled cause on November 21, 1941; and the final order and judgment entered by the District Court in the above entitled cause on December 11, 1941:

1. The District Court erred in sustaining the Defendants' motion to dismiss for want of jurisdiction; the District erred since this is a cause of action arising under the Constitution and laws of the United States.
2. The District Court erred in sustaining the Defendants' motion to dismiss; the District Court erred in denying that the rights claimed by plaintiff to have been abridged by the action of the defendants was a right guaranteed by the Constitution of the United States.
3. The District Court erred in failing to conclude as a matter of law that the Petition and Complaint of the Plaintiff stated a cause of action arising under the Constitution and Laws of the United States.
4. The District Court erred in failing to find that the Petition and Complaint of Plaintiff stated facts constituting a cause of action over which the District Court has jurisdiction.
5. The District Court erred in entering the final orders and judgments herein.

Wherefore, the Plaintiff-Appellant, Joseph E. Snowden, prays that the said final orders and judgments in this cause

may be reversed, and for such other and further relief as may be just in the premises.

Joseph E. Snowden,
W. Robert Ming, Jr.,
Harris B. Gaines,
Attorneys for the Plaintiff-Appellant.

Entered Mar. 20, 1942

30 And afterwards, to wit, on the 20th day of March A.D. 1942, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Charles E. Woodward, District Judge, appears the following entry, to wit:

31 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

(Caption—Civil Action No. 3090)

ORDER.

This cause coming on to be heard on the motion and petition of Plaintiff-Appellant that the time for the filing of the record on appeal and docketing this cause of action with the United States Circuit Court of Appeals for the Seventh Circuit, and all parties being present in Court, and the Court being fully advised,

It is Hereby Ordered, Adjudged and Decreed that the motion be granted and that the time for the filing of the record on appeal and docketing this cause of action with the United States Circuit Court of Appeals for the Seventh Circuit be, and it is hereby extended to April 18, 1942 from the 27th day of March, 1942.

Enter: Charles E. Woodward,
Judge of the Said District Court.

March 20, 1942.

34 And on, to wit, the 9th day of April, 1942, came the Plaintiff-Appellant by his attorneys and filed in the Clerk's office of said Court his certain Designation of Portions of Record in words and figures following, to wit:

35 IN THE DISTRICT COURT OF THE UNITED STATES
For the Northern District of Illinois
Eastern Division

Filed Apr. 9, 1942

(Caption—Civil Action No. 3090)

DESIGNATION OF PORTIONS OF RECORD TO BE CONTAINED IN RECORD ON APPEAL.

Appellant, Joseph E. Snowden, designates the following portions of the record on appeal in the above entitled cause of action:

1. Petition and Complaint.
2. Motion of Edward J. Hughes to Strike The Plaintiff's Complaint and the Suit.
3. Motion of Robert E. Straus, Eli M. Straus and James Levy, Co-Executors of the Last Will and Testament of Henry Horner, Deceased, to strike The Plaintiff's Complaint and Dismiss the Suit.
4. Order entered November 21, 1941 by Judge Woodward that the said cause, as to the Defendants, Robert W. Straus, Eli M. Straus and James Levy, Co-executors of the Last Will and Testament of Henry Horner, Deceased, and Edward J. Hughes be dismissed, and motion sustained.
5. Motion of Louie E. Lewis to Strike the Plaintiff's Complaint and Dismiss the Suit.
6. Order entered by Judge Woodward on December 11, 1941 giving Louie E. Lewis leave to file appearance and motion to Strike Plaintiff's Complaint and order sustaining motion to dismiss and order dismissing
7. Plaintiff's Notice of Appeal.
8. Statement of Points.
9. Order entered March 20, 1942, extending time for filing the record on appeal and docketing this action to April 18, 1942.
10. This designation of contents of the record on appeal and proof of service thereof.

Joseph E. Snowden,
W. Robert Mitig, Jr.,
Harris B. Gaines,
Attorneys for the Plaintiff Appellant.

A copy of the following documents is hereby acknowledged this 9th day of April, 1942.

1. The foregoing Designation of Portions of Record to be contained in Record on Appeal.
2. The Statement of Points.

Sonnenschein, Berkson, Lautmann, Levinson & Morse,
George F. Barrett,
Attorney General
Attorneys for Defendants-Appellees.

36 Northern District of Illinois } ss:
Eastern Division }

I, Hoyt King, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with Praecipe filed in this Court in the cause entitled Joseph E. Snowden vs. Edward J. Hughes, Louie E. Lewis and Robert E. Straus, Eli M. Straus and James Levy, as Co-Executors of the Last Will and Testament of Henry Horner, Deceased, No. 3090, as the same appear from the original records and files thereof now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 15th day of April, A. D. 1942.

Hoyt King,
Clerk.

(Seal)

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record filed in this Court on May 21, 1942, in the following entitled cause:

Cause No. 7986.

Joseph E. Snowden,
Plaintiff-appellant,

vs.

Edward J. Hughes, *et al.*,
Defendants-appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of February, A. D. 1943.

Kenneth J. Carrick,
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

And afterwards, to-wit: On the twenty-first day of May, 1942, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7986.

Joseph E. Snowden

vs.

Edward J. Hughes.

The Clerk will enter my appearance as counsel for appellee.

George F. Barrett,
Attorney General of the State of Illinois,
208 S. LaSalle St.,
Chicago, Illinois.

Endorsed: Filed May 21, 1942. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the third day of June, 1942, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellees, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7986.

Joseph E. Snowden,

appellant,

vs.

Edward J. Hughes, Louie E. Lewis and Robert E. Straus, Eli M. Straus and James Levy, as co-executors of the Last Will and Testament of Henry Horner, Deceased,

appellees.

The Clerk will enter our appearance as counsel for Robert E. Straus, Eli M. Straus and James Levy, as co-executors of the Last Will and Testament of Henry Horner, Deceased, appellees.

Sonnenschein, Berkson, Lautmann, Levinson & Morse,
77 W. Washington St.,
Chicago.

Herbert M. Lautmann,
77 W. Washington St.,
Chicago.

Isaac E. Ferguson,
77 W. Washington St.,
Chicago.

Frank C. Bernard,
77 W. Washington St.,
Chicago.

Endorsed: Filed June 3, 1942. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the eleventh day of November, 1942, the following proceedings were had and entered of record, to-wit:

Wednesday, November 11, 1942.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Otto Kerner, Circuit Judge.

7986	Joseph E. Snowden, *Plaintiff-Appellant,* *vs.* Edward J. Hughes, *et al.,* *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Joseph E. Snowden and Mr. Heber T. Dotson, counsel for appellant, and by Mr. Wm. Creighton Wines, counsel for appellees Edward J. Hughes and Louie E. Louis, and by Mr. Isaac E. Ferguson, counsel for appellees Robert E. Straus, Eli M. Straus and James Levy, Co-executors of the Last Will and Testament of Henry Horner, Deceased, and the Court takes this matter under advisement.

And afterwards, to-wit: On the twenty-fourth day of December, 1942, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7986. October Term and Session, 1942.

JOSEPH E. SNOWDEN,
Plaintiff-Appellant,
vs.
EDWARD J. HUGHES, LOUIE E. LEWIS, and ROBERT E. STRAUS, ELI M. STRAUS and JAMES LEVY, as co-executors of the last will and testament of Henry Horner, Deceased,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

December 24, 1942.

Before SPARKS, MAJOR, and KERNER, *Circuit Judges.*

KERNER, *Circuit Judge.* This is an appeal from a judgment dismissing plaintiff's complaint for lack of jurisdiction. The suit was brought to recover $50,000 damages for an asserted illegal refusal to certify that plaintiff had been nominated as a candidate for representative in the general assembly of Illinois. There is no diverse citizenship and the jurisdiction must depend upon the presence of a federal question. Plaintiff claimed the right to maintain the suit was conferred upon him by § 24, subdivisions 1, 12, and 14 of the Judicial Code, 28 U. S. C. A. § 41(1), (12), (14).

The complaint alleged plaintiff was one of several candidates at the April 9, 1940, Republican primary election held in the third senatorial district of Illinois, for the purpose of electing nominees for the office of representative in the general assembly of Illinois; that there were to be two nominees elected; that under the laws of Illinois,

the two candidates receiving the highest number of votes were to be declared the nominees; that at the said primary election, the returns were made to the county clerk of Cook County, duly authenticated and certified by the canvassing board of Cook County, Illinois, and forwarded to the secretary of state of Illinois, showing that plaintiff and one Jenkins were the two candidates receiving the highest number of votes for nomination for representative in the general assembly on the Republican ticket; that the tabulated statement of returns made to the secretary of state by the county canvassing board of Cook County was to be canvassed by the state primary canvassing board, proclamation of the result thereof made, and certificates of nomination issued to candidates appearing to have received the highest number of votes; that the official vote of the primary election, as duly published by the secretary of state of Illinois, showed plaintiff as being one of the two candidates receiving the highest number of votes cast; that the governor, secretary of state, and state treasurer—members of the state primary canvassing board—are charged with the duty of canvassing the tabulated statement of returns, proclaiming the results, and issuing the certificate of nomination; that the defendants, while acting as the duly designated officers of the state primary canvassing board, issued their official proclamation designating only one nominee for the office of representative in the general assembly and illegally failed and refused to certify that plaintiff had been duly nominated as a candidate.

The complaint charged that the unlawful acts on the part of the defendants were done in furtherance of a conspiracy between the defendants and were an unequal administration of the laws of Illinois—a denial to plaintiff, by the State of Illinois, of the protection of the Fourteenth Amendment to the Constitution of the United States, and deprived plaintiff of the rights, privileges, and immunities secured by the Constitution of the United States and the laws of the United States.

Plaintiff claims that the defendants as ministerial officers failed and refused to comply with the law, and in so doing, prevented plaintiff from enjoying the equal protection of the laws of Illinois and of the United States, and have been guilty of conduct which deprived him of rights guaranteed to him by the Fourteenth Amendment to the Constitution of the United States; and that he, therefore,

has a cause of action under the Civil Rights Act of April 20, 1871, now § 1979, Revised Statutes, 8 U. S. C. A. § 43, which provides: "Every person who, under color of any statute * * * of any State * * * subjects * * * any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law * * *."

It is well settled that privileges and immunities of citizens of the United States are only such as arise out of the nature and essential character of the national government, or are specifically granted or secured to all citizens or persons by the Constitution of the United States, *Twining* v. *New Jersey*, 211 U. S. 78, 97.

The argument is made that the privileges and immunities of the citizens of the United States include the right to an equal opportunity of being elected to serve in the legislative councils of the state, and in support of this contention plaintiff cites the cases noted below.[1]

This case is very different from the cases cited. In the *Swafford* and *Wiley* cases, the right of the plaintiff alleged to have been infringed was the right to vote in an election for a member of the national house of representatives. It was held that a federal question was involved, because the right to vote for a member of Congress was dependent upon the Constitution and the laws of the United States.

In the *Lane* case, a Negro citizen complains of a denial of the right to vote, in direct violation of the Fifteenth Amendment; and in the *Hague* case, federal jurisdiction was bottomed on plaintiff's claim that certain ordinances relating to public meetings, deprived the plaintiff of the right to peaceful assembly and free speech secured by the Fourteenth Amendment; while the *Kline* case was based on diversity of citizenship, with no claim that the matter in controversy arose under the Constitution and the laws of the United States.

Section 454 of the Elections Act, c. 46 Ill. Rev. St. 1941, provides that the candidates receiving the highest number of votes shall be declared nominated, and § 456 of the Act provides: "Tabulated statements of the returns of the primary for the nomination of candidates * * * shall

1. *Swafford* v. *Templeton*, 185 U. S. 487; *Wiley* v. *Sinkler*, 179 U. S. 58; *Hague* v. *C. I. O.*, 307 U. S. 496; *Lane* v. *Wilson*, 307 U. S. 268; and *Kline* v. *Burke Construction Co.*, 260 U. S. 226.

be made to the Secretary of State, canvassed by the State Primary Canvassing board, proclamation of the result thereof made, and certificates of nomination issued, * * * and the election of any person nominated * * * may be contested by filing with the clerk of the circuit court a petition in writing * * *."

In our case, the plaintiff does not contend that the Elections Act of Illinois, governing primary elections, is in any respect repugnant to the Constitution of the United States; on the contrary, he admits that the statute under which the defendants derived their authority as members of the state primary canvassing board is fair, but he claims the actual administration of the law fell far short of the level required by the Fourteenth Amendment, and he insists that the defendants, in refusing to issue to him a certificate of nomination, denied him the equal protection of the laws.

It has always been accepted that the Fourteenth Amendment does not apply to the acts of individuals, *Virginia* v. *Rives*, 100 U. S. 313; *United States* v. *Harris*, 106 U. S. 629; that the protection it offers is only against the acts of states. Established as this limitation is, the problem of determining what action is state action within the meaning of the amendment is not always easy. To be sure, in every case the initial question is whether the action was by a state instrumentality, but the controlling question is whether sufficient state sanction was given to such action to make it the action of the state for the purposes of the Fourteenth Amendment, since "Many acts done by an agency of a State may be illegal in their character, when tested by the laws of the State, and may, on that ground, be assailed, and yet they cannot, for that reason alone, be impeached as being inconsistent with the due process of law enjoined upon the States. The Fourteenth Amendment was not intended to bring within Federal control everything done by the States or by its instrumentalities that is simply illegal under the state laws, but only such acts by the States or their instrumentalities as are violative of rights secured by the Constitution of the United States." *Owensboro Co.* v. *Owensboro*, 200 U. S. 38, 47.

In *Barney* v. *City of New York*, 193 U. S. 430, the court held that where the act complained of was forbidden by the state legislature, it could not be said that the act was that of the state for the purposes of the Fourteenth Amendment, and the court denied the jurisdiction of the District Court

to entertain the cause. This decision controls the instant case, for it appears on the face of the plaintiff's complaint that the defendants' acts were forbidden by the Illinois statute and that these illegal acts were the gravamen of the plaintiff's complaint.

We recognize that there is some question as to the current value of the *Barney* case as authority. In the light of subsequent Supreme Court cases,[2] there can be no doubt that the broad language used in the *Barney* opinion is no longer accurate. For example, since *Raymond* v. *Chicago Traction Co.*, 207 U. S. 20, the Supreme Court has authorized the federal courts to take jurisdiction on the ground that the decision of a state administrative tribunal was contrary to the Fourteenth Amendment. Nor need the federal courts refrain from exercising jurisdiction under the amendment until the highest court of a state has determined whether the complained of enforcement of the state statute has violated the constitutional provision of the state which chanced to be similar to the Fourteenth Amendment. *Home Tel. & Tel. Co.* v. *Los Angeles*, *supra*. These cases and others in which the *Barney* case is discussed, evidence the trend of the court to subject to the federal courts' scrutiny the actions of the states before such actions have been sanctioned by the highest authority of the state, but the narrow holding of the *Barney* case still stands as a matter of law and as a matter of sound federal jurisprudence. We conclude that when the act complained of is plainly and clearly in violation of a state law, as in our case, it is not an act of the state for the purposes of the Fourteenth Amendment.

The judgment is

AFFIRMED.

Endorsed: Filed Dec. 24, 1942. Kenneth J. Carrick, Clerk.

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2. The Barney case was modified in *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278.

And on the same day; to-wit: On the twenty-fourth day of December, 1942, the following further proceedings were had and entered of record, to-wit:

Thursday; December 24, 1942.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge,
Hon. J. Earl Major, Circuit Judge,
Hon. Otto Kerner, Circuit Judge.

Joseph E. Snowden,
Plaintiff-Appellant,
7986 *vs.*
Edward J. Hughes, *et al.*,
Defendants-Appellees.

Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed, with costs.

And afterwards, to-wit: On the thirteenth day of January, 1943, there was filed in the office of the Clerk of this Court, a motion for leave to file petition for a rehearing instanter, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7986.

Joseph E. Snowden,
Plaintiff-Appellant,
vs.
Edward J. Hughes, Lonie E. Lewis and Robert E. Straus, Eli M. Straus and James Levy, as Co-Executors of the Last Will and Testament of Henry Horner, Deceased,
Defendants-Appellees.

MOTION.

Now comes Joseph E. Snowden, Plaintiff Appellant, by his attorneys, Joseph E. Snowden, W. Robert Ming, Jr., and Heber T. Dotson, and respectfully moves this Honorable Court for the entry of an order giving leave to this Plaintiff-Appellant to file, Instanter, his printed Petition for a re-hearing in the above entitled cause.

Joseph E. Snowden,
W. Ming, Jr.,
Heber T. Dotson,
Attorneys for Plaintiff-Appellant, Joseph E. Snowden.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit

No. 7986.

Joseph E. Snowden,
Plaintiff-Appellant,
vs.
Edward J. Hughes, Louie E. Lewis and Robert E. Straus, Eli M. Straus and James Levy, as Co-Executors of the Last Will and Testament of Henry Horner, Deceased,
Defendants-Appellees.

PETITION OF APPELLANT, JOSEPH E. SNOWDEN, FOR LEAVE TO FILE, INSTANTER, HIS PRINTED PETITION FOR A RE-HEARING IN THE ABOVE ENTITLED CAUSE.

Your Petitioner, Joseph E. Snowden, respectfully shows that he is the Plaintiff-Appellant in the above entitled matter and that he has personal knowledge of the facts herein set forth.

That he received a copy of the opinion of the Court in the above matter on the 26th day of December, 1942, due to a delay in the delivery of the mail.

Your Petitioner further shows that in ascertaining the time in which he was to file his petition for a re-hearing he read a copy of the Rules of this Court which was not down to date and was of the opinion that he, the petitioner, had twenty days in which to file his petition for a re-hearing in the above matter under the Rules of this Court.

Your Petitioner respectfully shows unto the Court that substantial justice will be done by the Court if this Petitioner is permitted to file, Instanter, his printed Petition for a rehearing in the above entitled matter.

Your Petitioner therefore respectfully asks that an order be entered by this Court allowing this Appellant leave to file, Instanter, his printed Petition for a re-hearing in the above matter.

Joseph E. Snowden.

State of Illinois }
County of Cook } ss.

Joseph E. Snowden, being first duly sworn states that he is the petitioner in the above petition, that he has read the same and says that the same is true in substance and in fact.

Joseph E. Snowden.

Subscribed and sworn to before me this 12th day of January, 1943.

Benjamin W. Clayton,
(Seal) *Notary Public.*

Endorsed: Filed Jan. 13, 1943. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the fourteenth day of January, 1943, the following further proceedings were had and entered of record, to-wit:

Thursday, January 14, 1943.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

7986 Joseph E. Snowden, *Plaintiff-Appellant*, vs. Edward J. Hughes, *et al.*, *Defendants-Appellees.* } Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellant, it is ordered that appellant may file a petition for a rehearing of this cause instanter.

And on the same day, to-wit: On the fourteenth day of January, 1943, there was filed in the office of the Clerk of this Court, a petition for a rehearing which said petition for a rehearing is not copied here.

And afterwards, to-wit: On the twenty-first day of January, 1943, there was filed in the office of the Clerk of this Court, an answer to petition for a rehearing which said answer to petition for a rehearing is not copied here.

And afterwards, to-wit: On the thirtieth day of January, 1943, the following further proceedings were had and entered of record, to-wit:

Saturday, January 30, 1943.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge,
Hon. J. Earl Major, Circuit Judge,
Hon. Otto Kerner, Circuit Judge.

7986	Joseph E. Snowden, *Plaintiff-Appellant,* *vs.* Edward J. Hughes, *et al.*, *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the petition for a rehearing of this cause be, and it is hereby, denied.

And afterwards, to-wit: On the fourth day of February, 1943, there was filed in the office of the Clerk of this Court, a motion to stay mandate, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7986.

Joseph E. Snowden,
Plaintiff-Appellant,
vs.
Edward J. Hughes, Louie E. Lewis and Robert E. Straus, Eli M. Straus and James Levy, as Co-Executors of the Last Will and Testament of Henry Horner, Deceased,
Defendants-Appellees.

MOTION.

Now Comes Joseph E. Snowden, Plaintiff, Appellant, by his attorneys, Joseph E. Snowden, W. Robert Ming, Jr., and Heber T. Dotson, and respectfully moves this Honorable Court in accordance with paragraph (2) of rule (25) of the Rules of the United States Circuit Court of Appeals, For the Seventh Circuit, that a stay of Mandate for a period of (30) days be granted in the above entitled cause, pending application for Certiorari to the Supreme Court of the United States.

Joseph E. Snowden,
W. Robert Ming, Jr.,
Heber T. Dotson,
Attorneys for Plaintiff-Appellant,
Joseph E. Snowden.

Endorsed: Filed Feb. 4, 1943. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the fourth day of February, 1943, the following further proceedings were had and entered of record, to-wit:

Thursday, February 4, 1943.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

7986	Joseph E. Snowden, *Plaintiff-Appellant*, *vs.* Edward J. Hughes, *et al.*, *Defendants-Appellees.*	Appeal from the District Court of the United States for the Northern District of Illinois, Eastern Division.

On motion of counsel for appellant, it is ordered that the issuance of the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the Rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (excepting briefs of counsel, stipulations relative to time for filing briefs and election of counsel to print record) in the following entitled cause:

Cause No. 7986.

Joseph E. Snowden,
Plaintiff-Appellant,

vs.

Edward J. Hughes, *et al.*,
Defendants-Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of February, A. D. 1943.

Kenneth J. Carrick.
(Seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

[fol. 42] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1942

No. —

JOSEPH E. SNOWDEN, Petitioner,

vs.

EDWARD J. HUGHES, LOUIE E. LEWIS and ROBERT E. STRAUS, Eli M. Straus and James Levy, as Co-executors of the Last Will and Testament of Henry Horner, Deceased

ORDER EXTENDING TIME WITHIN WHICH TO FILE PETITION FOR CERTIORARI

Upon Consideration of the application of counsel for the petitioner.

It Is Ordered that the time for filing petition for certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 6th, 1943.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 30th day of April, 1943.

[fol. 43] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed June 7, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.